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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI V.K. SHRIVASTAVA, J.

W.P. No. 1380 of 2006

PETITIONERS

1. Prakash Chandra Gautam S/o Shri Nirmal Chandra Gautam, Aged about 34 years, presently working as Shiksha Karmi Grade-I at Government Model Higher Secondary School, Navapara-Rajim, District Raipur; R/o behind Swastik Automobiles, Bus Stand, Navapara Rajim, District-Raipur (CG)

2. Ashok Kumar Sahu S/o Shri Kushal Ram Sahu; Aged about 35 years, presently working as Shiksha Karmi Grade-I at Government Model Higher Secondary School, Navapara-Rajim, District Raipur; R/o Near Pawan Diwan Ashram, Raipur Road, Rajim, District Raipur (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh Through the Secretary, School Education Department, DKS Bhawan, Raipur (C.G.)

2. Chhattisgarh Public Service Commission, Through its Secretary, Shankar Nagar, Raipur (CG)

3. The Examination Controller, Chhattisgarh Public Service Commission Shankar Nagar, Raipur (C.G.)

Present: Shri P. Diwakar, learned Sr. Advocate with Shri A. Minhaj, learned counsel for the petitioners.

Shri Prashant Mishra, learned Addl. Adv. Gen. for the State of Chhattisgarh/respondent No.1.

Shri Ashish Shrivastava, learned counsel for respondents No. 2 &3.

Shri Utkarsh Verma, learned counsel for intervener.

ORAL ORDER
(Passed on 27th November, 2006)

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The following oral order of the Court was passed by

S.R. NAYAK, CJ .

The petitioners are the applicants for the post of Principal, Higher Secondary School (+2) in the written examination conducted by the Chhattisgarh Public Service Commission, the 2nd respondent herein. The second respondent called for application for filling-up 46 posts of Principal, Higher Secondary School (+2). Out of 46 posts, 25 posts are reserved for unreserved category, 7 posts to Scheduled Caste, 8 posts to Scheduled Tribe and 6 posts to OBC.

(2) It appears that on the basis of the relative performance of the candidates in each of the aforementioned four categories, separate and exclusive lists for each category are made. Admittedly, a list of 85 candidates is made with regard to unreserved category and this list includes only those candidates who belong to general merit category. In other words, in preparing the list of 85 candidates under unreserved category for the purpose of calling for eligible candidates for interview, the 2nd respondent has not taken into account all the candidates who have applied for the post and appeared in the written examination nor the relative performance of those candidates.

(3) The main grievance of the petitioners in this writ petition is that the above procedure adopted by the 2nd respondent in preparing the lists is *ex facie* illegal, unconstitutional and violative of Articles 14 and 16(1) of the Constitution of India.

(4) I find force in the above submission of the learned Senior counsel appearing for the petitioners. It is needless to state that with regard to the posts meant for unreserved category, all the applicants who have applied for the posts are entitled to compete on the basis of their relative merits. It is also well settled that a candidate belonging to reserved category like Scheduled Casts, Scheduled Tribe and OBC can compete with the general category candidates and on his own merit could secure a seat or a job meant for

unreserved category. The post or admission given to him on the basis of relative merit amongst all candidates cannot be set-off against the seats earmarked or reserved for reserved category like Scheduled Casts, Scheduled Tribe and OBC. In that view of the matter, the 2nd respondent while preparing the list of 85 persons for the purpose of calling for the interview to fill-up 25 posts meant for unreserved category, ought to have considered the relative merits of all those candidates who have appeared for the examination irrespective of the fact whether some of them belong to any reserved category like Scheduled Casts, Scheduled Tribe and OBC and in terms of the relative inter-se merit should have prepared the list. This cardinal principle which is required to be observed by the Commission is flouted in the preparation of the lists.

(5) There is no difficulty for the Court to appreciate how the above procedure adopted by the 2nd respondent would operate to the prejudice of the reserved categories like Scheduled Casts, Scheduled Tribe and OBC. If the candidates belonging to Scheduled Casts, Scheduled Tribe and OBC on their own relative merit could secure appointments to any of the 25 posts of Principal, Higher Secondary School (+2) reserved for unreserved category, such appointments are required to be excluded from the number of posts reserved for Scheduled Casts, Scheduled Tribe and OBC categories, so that the relatively less meritorious candidates in those three categories would be entitled to insist and secure appointments against 7 posts, 8 posts and 6 posts reserved for the candidates belonging to Scheduled Casts, Scheduled Tribe and OBC respectively.

(6) In the result and for the foregoing reasons, we allow the writ petition. A direction shall issue to the 2nd respondent to remake the list in accordance with the law and the observations made in this order. It is needless to state that the 2nd respondent shall in the first instance make the list of candidates to be called for interview to fill-up 25 posts of Principal, Higher Secondary School (+2) and

thereafterwards proceed to make lists for the purpose of interview to fill-up the posts reserved for reserved categories like Scheduled Casts, Scheduled Tribe and OBC excluding all those candidates belonging to these three categories who have on their own relative merit secure appointment against the posts reserved for unreserved categories. No costs.

(7) The parties are entitled for urgent certified copy of this order.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge

Kamde